

DRAFT

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF MILPITAS AND HMH ENGINEERS**

THIS AGREEMENT for consulting services is made by and between the City of Milpitas ("City") and HMH Engineers ("Consultant") as of February 15, 2005 in Milpitas, California.

AGREEMENT

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on December 31, 2005, the date of completion specified in Exhibit A, and Consultant shall complete all the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.
- 1.2 **Standard of Performance.** Consultant shall prepare all work products and perform all services required pursuant to this Agreement in accordance with generally recognized professional standard in the industry, by a practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession.
- 1.3 **Professional Skill.** It is mutually agreed by the parties that City is relying upon the professional skill of the consultant as a specialist in the work, and Consultant represents to the City that its work shall conform to the generally recognized professional standard in the industry. Acceptance of the Consultant's work by the City does not operate as a release of Consultant's representations. It is intended that Consultant's work shall conform to the generally recognized professional standard in the industry and its standards of accuracy, completeness and coordination.
- 1.4 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. Exhibit A shall name any specific personnel (including title and hourly charge rate) who shall be performing services. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

- 1.5 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1 above and to complete Consultant's obligations hereunder.

Section 2. COMPENSATION. City hereby agrees to pay Consultant an amount not to exceed "one hundred forty-six thousand four hundred sixty dollars" (\$ 146,460) for all services to be performed and reimbursable costs incurred under this Agreement. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consultant further represents that the amount of the compensation specified in this Section 2 shall not be exceeded. Hourly rates for personnel performing services shall be as shown in Exhibit B. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

- 2.1 **Invoices.** Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred during the billing period. Invoices shall contain the following information:

- Serial identification of bills; ("Invoice #")
- The beginning and ending dates of the billing period;
- A Task Summary containing the City project name and number, purchase order number, Project Manager, original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, durational percentage complete and the cost percentage of completion, if applicable;
- Consultant shall use the City's "Consultant Progress Payment" format specified in Exhibit D for invoice tracking and shall submit the form with each invoice.
-
- The Consultant's signature.

- 2.2 **Monthly Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above and is otherwise acceptable to the City

to pay Consultant. Ten (10) percent shall be retained by the City from each contract billing until the completion of the contract unless authorized differently by City. In the event that an invoice is not acceptable to the City, a partial payment may be made to the Consultant on any unchallenged portion while said invoice is returned to Consultant within thirty (30) days of the City's receipt of the invoice with a detailed explanation of the deficiency. Partially paid invoices are to be resubmitted to City for only the challenged portion. City's obligation to pay a returned invoice shall not arise earlier than thirty (30) days after resubmission of the corrected invoice.

- 2.3 **Total Payment.** City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement, unless previously authorized by City in writing.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment. In the event that Consultant identifies additional work outside the scope of services, or substantial unforeseen circumstances within the scope of services specified in Exhibit A that may be required to complete the work under this Agreement, Consultant shall immediately notify the City and shall provide a written not-to-exceed price for performing this additional work. Consultant shall not perform extra work without specific written City approval.

- 2.4 **Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on Exhibit B.
- 2.5 **Reimbursable Expenses.** Reimbursable expenses are shown on Exhibit B, and shall not exceed "one thousand dollars" (\$ 1,000). Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total not-to-exceed amount of compensation provided under this Agreement.
- 2.6 **Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any other applicable federal or state taxes.
- 2.7 **Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date. The City shall have no obligation to compensate Consultant for work not verified by logs or timesheets.

- 2.8 **Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of a written Notice to Proceed from the City.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, cellular telephone, long-distance telephone, or other communication charges, vehicles, and reproduction facilities.

If the performance of the work specified in Exhibit A requires destructive testing or other work within the City's public right-of-way, Consultant, or Consultant's subconsultant, shall obtain an encroachment permit from the City.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Consultant shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement and shall produce said policies to the City upon demand. The cost of such insurance shall be included in the Consultant's price. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

- 4.1 **Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the City Attorney. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided,

shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General requirements. Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement shall be attached limiting the coverage.

4.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as an endorsement at least as broad as Insurance Services Office form number CG 20 10 (11/85 ed.) to the policy:

- a. City and its officers, employees, agents, contractors, consultants, and volunteers shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, contractors, consultants, or volunteers.

- b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees, contractors, consultants, and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.
- d. Any failure of CONSULTANT to comply with reporting provisions of the policy shall not affect coverage provided to CITY and its officers, employees, agents, and volunteers.
- e. An endorsement shall state that coverage shall not be suspended, voided, or canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

4.3 Professional Liability Insurance. If Consultant shall be performing licensed professional services, Consultant shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) covering the licensed professionals' errors and omissions.

4.3.1 Any deductible or self-insured retention shall not exceed \$150,000 per claim.

4.3.2 An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

4.3.3 The policy must contain a cross liability clause.

4.3.4 The following provisions shall apply if the professional liability coverages are written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be *before the date of the Agreement*.
- b. Insurance must be maintained and evidence of insurance must be provided for at least three years after completion of the Agreement or the work, unless waived in writing by the City.

- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The City shall have the right to exercise, at the Consultant's sole cost and expense, any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.
- d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

4.4 Requirements for All Policies.

- 4.4.1 Acceptability of insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A.
- 4.4.2 Verification of coverage. Prior to beginning any work under this Agreement, Consultant shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies at any time.
- 4.4.3 Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.
- 4.4.4 Deductibles and Self-Insured Retentions. Consultant shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of the City, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, contractors, consultants, and volunteers. The City may condition approval of an increase in deductible or self-insured retention levels with a requirement that Consultant procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to the City.

4.4.5 Notice of Reduction in Coverage. In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.

4.5 Remedies. In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Declare Consultant in material breach of the Agreement and terminate the Agreement.

4.6 Waiver. The Risk Manager of the City has the authority to waive or vary any provision of Sections 4.2 through 4.5. Any such waiver or variation shall not be effective unless made in writing.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES. Consultant shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, agents, contractors, consultants, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work pursuant to Section 1.2. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises from the negligence or willful misconduct of the City or its officers, employees, agents, contractors, consultants, or volunteers and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been

determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Section 6. STATUS OF CONSULTANT.

- 6.1 **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3. Otherwise, City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.
- 6.2 **Consultant No Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

7.4 **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions and to perform this Agreement. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid business license from City.

7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the City or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

8.1 **Termination.** City may terminate this Agreement at any time and without cause upon written notification to Consultant.

In the event of termination, Consultant shall be entitled to compensation for services performed prior to the effective date of termination as provided in Section 2. City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

8.2 **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1 no more than thirty (30) days in aggregate. Any such extension shall be specified in writing by the City. Consultant understands and agrees that, if City issues such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the City, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

- 8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.
- 8.4 **Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors listed in the Consultant's proposal, without prior written approval of the City.
- 8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.
- 8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, any or all of the following:
- 8.6.1 Immediate cancellation of the Agreement;
 - 8.6.2 Retention of the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement prior to cancellation; and
 - 8.6.3 Retention of a different consultant at Consultant's cost to complete the work described in Exhibit A not finished by Consultant.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, calculations, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City at any time upon demand of the City. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. Failure by Consultant to deliver these documents to the City within the time period specified by the City shall be a material breach of this Agreement. City and Consultant agree that, until final

approval by City, all data, plans, specifications, reports and other documents are preliminary drafts not kept by the City in the ordinary course of business and will not be disclosed to third parties without prior written consent of both parties. All work product submitted to the City pursuant to this Agreement shall be deemed a "work for hire". Upon submission of any work for hire pursuant to this Agreement, and acceptance by the City as complete, non-exclusive title to copyright of said work for hire shall transfer to the City. The compensation recited in Exhibit B shall be deemed to be sufficient consideration for said transfer of copyright.

- 9.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

- 10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Santa Clara or in the United States District Court for the Northern District of California.
- 10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

- 10.4 **No Implied Waiver of Breach.** The waiver of performance or any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 **Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant were an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, may be disqualified from holding public office in the State of California.

Consultant certifies that it has not paid any direct or contingent fee, contribution, donation or consideration of any kind to any firm, organization, or person (other than a bona fide employee of Consultant) in connection with procuring this Agreement, nor has Consultant agreed to employ or retain any firm, organization, or person in connection with the performance of this Agreement as a condition for obtaining this Agreement.

- 10.8 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

- 10.9 **Ownership of Documents.** All documents developed or obtained by Consultant in the performance of the Agreement shall be deemed to be the property of the City. Consultant shall not be responsible for use of the documents by City or other third party except as intended by this agreement.
- 10.10 **Contract Administration.** This Agreement shall be administered by Jimmy Nguyen, who is authorized to act for, and on behalf of City. All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 10.11 **Notices.** Any written notice to Consultant shall be sent to:
Michael L. Morsilli, Vice President
1570 Oakland Road
San Jose, California 95131
- Any written notice to City shall be sent to:
Greg Armendariz, Acting City Engineer
455 East Calaveras Boulevard
Milpitas, California 95035
- 10.12 **Professional Seal.** Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.
- 10.13 **Record Drawing.** At the end of construction, the consultant shall prepare a record drawing using the red-lined plans to be provided by the City. The record drawing shall incorporate all changes made during construction in the field to show the actual record of construction.
- 10.14 **Integration.** This Agreement, including the exhibits, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.
- 10.15 **Exhibits.** All exhibits referenced in this Agreement are incorporated by reference herein.

CITY OF MILPITAS

CONSULTANT

Charles Lawson, Acting City Manager

Michael L. Morsilli, Vice President
HMH Engineers

ATTEST:

Gail Blalock, City Clerk

Taxpayer Identification Number

APPROVED AS TO FORM:

Steven T. Mattas, City Attorney

APPROVED AS TO CONTENT:

Department/Division Head

APPROVED:

Finance Director/Risk Manager

Attachments:

- Exhibit A: Scope of Services
- Exhibit A-A: Project Schedule
- Exhibit B: Compensation Schedule, personnel and rates
- Exhibit C: Insurance Coverage Documents
- Exhibit D: Sample Progress Payment form

EXHIBIT A
SCOPE OF SERVICES

DRAFT

Client Initials	Consultant Initials

SCOPE OF SERVICES

Mr. Jimmy Nguyen
City of Milpitas
455 E. Calaveras Blvd.
Milpitas, CA 95035-5411

RE: South Park Victoria Drive Pavement Rehabilitation (Phase I and II)

Dear Jimmy:

We propose to provide civil engineering and surveying services in connection with the above referenced project in accordance with our standard Agreement Between Client and Consultant, supplemented by this letter that is attached thereto.

The proposed project consists of pavement rehabilitation and roadway improvements of approximately 4,700 feet along South Park Victoria Drive, between Yosemite Drive and Calaveras Boulevard (Phase I) and between Big Basin Drive and Saratoga Drive (Phase 2). Phases I and II will be developed simultaneously as a single construction package. The work to be developed within these phases include rubberized asphalt concrete overlay, localized full depth asphalt concrete repairs and reconstruction, cold planning, replacement of traffic detector loops, sealing of cracks and replacement of pavement delineation, as well as localized curb, gutter and sidewalk repair.

The existing conditions to be addressed within the project limit described above for South Park Victoria Drive include:

- Steep and varied cross slopes, including the Edsel and Calaveras intersections
- Localized curb and gutter buckling
- Large grade breaks causing vehicles to bottom out when while entering/exiting certain driveways
- Excessive roadway crowning and high intersections compared to roadway elevation
- Significantly buried concrete median islands (now only approximately 2" higher than roadway pavement)
- Possible base failure and or inadequate structural section as indicate by large and consistent pavement failures at certain locations
- Provide specific work restrictions to minimize/eliminate impacts during construction to high traffic volume areas especially at Calaveras/Park Victoria intersection
- Provide specific work restrictions to minimize/eliminate impacts during construction to Randall Elementary School at the corner of S. Park Victoria Drive and Edsel Drive. Restrictions to be accepted/agreed by school district.

<i>Client Initials</i>	<i>Consultant Initials</i>

- Provide specific work restrictions to minimize/eliminate impacts during construction to the many businesses and residents accesses/driveways

Project methodology to be used in addressing the above listed items for the rehabilitation of the existing pavement section along S. Park Victoria Drive generally consist of determining approximate locations for full depth pavement reconstruction, AC overlay, cold milling, AC inlay plus overlay, pre-overlay repair such as crack pre-treatment, thick AC overlay in single or double lifts, and localized repairs. Large grade breaks and cross slopes are intended to be removed and conform locations at cross streets and intersections will be leveled as feasible. Locations of indicated repair will be called out in a grid pattern through stationing, offset distances, and as needed elevations – on the plans and the criteria and method of construction will be addressed with project specifications. Proposed repair locations will be based on project specific geotechnical investigation. The following services identify this methodology.

I. SERVICES

A. Project Management

1. HMM Engineers will supervise and implement the design for the Civil Engineering aspects of the project. In addition, HMM will manage subconsultants and coordinate with the City of Milpitas.
2. The Project Manager will assist the City in coordination and project organization and monitoring. This involves planning the work program, organizing the team personnel to implement the program, monitoring the team progress and controlling the quality of the work products to complete the project on time and within budget.
3. The work program will include periodic team meetings with the City to establish clear, concise project goals, design criteria, schedules and budgets. Minutes will be taken at meetings describing topics discussed, decisions made and action to be taken. Meeting minutes will be distributed to participants and appropriate affected parties.
4. Provide updated Design and Construction Schedule at each submittal.

B. Funding Assistance Services

Provide assistance to City in processing the project in conjunction with the Local Assistance Procedures Manual. Draft Form E-76 for Exempt Projects for City review in order to obtain approval of "Authorization to Proceed" by funding assistance agency. Provide support for City Staff to follow procedural directions as indicated through the funding assistance program.

<i>Client Initials</i>	<i>Consultant Initials</i>

C. Preliminary Investigation

Obtain and review available data and information pertinent to the project from the Cities, County, Caltrans, utilities, and other agencies. Such information may include the following:

1. Environmental clearance documents.
2. Preliminary plans and construction documents prepared previously for portions of the project.
3. Aerial photos, topographic base sheets, master plans record drawings of City, County, Caltrans facilities and utility systems.
4. Survey notes, parcel maps, tract maps and other record right-of-way documents.
5. Pertinent historical correspondence.
6. Available traffic engineering studies and geotechnical and pavement design studies.
7. Preliminary title reports.

D. Aerial Base Map

1. Perform control surveys of the street monumentation to establish construction control.
2. Obtain rectified aerial photographs from City and prepare a base map (background) of the project at a scale of one-inch equals forty feet (1" = 40') in digital format for use in AutoCAD. Supplement aerial photo with field survey data.
3. Perform supplemental field surveys to obtain rim and invert elevations of existing accessible gravity manholes, catch basins and utilities as required, and elevations of curbs and pavement at points of conform.
4. Perform office calculations and data reduction to compile control, topographic and utility information into digital base maps in AutoCAD. Compile contour data at one-foot minimum intervals for base map.

<i>Client Initials</i>	<i>Consultant Initials</i>

E. Geotechnical Investigation

Engage geotechnical engineering subconsultant, Parikh Consultants Inc., to conduct field investigations and soils borings, perform laboratory testing and prepare a geotechnical report which will include boring logs and recommendations for pavement structural section requirements.

1. Research and Data Collection: Review of available pavement as-built data of the project and its vicinity.
2. Permits/USA Clearances: Comply with local permit requirements. Field locate the borings and call for USA clearance. City permit for encroachment will be provided at no cost.
3. Field Exploration: Core and drill 7 cores/borings along the pavement corridor for phase 1 segment and 3 cores/borings for the phase 2 segment. The cores will be drilled to evaluate the pavement section and proposed overlays. The borings will be drilled beyond to measure the aggregate section and collect subgrade samples. The boring locations will depend upon the available access and traffic control limitations. We anticipate using a truck mounted drill rig for our work. CHEC Consultants will perform Dynaflect testing. They will provide traffic control (arrow board) and conduct non-destructive testing using Caltrans Method.
4. Laboratory Testing: Perform laboratory tests on representative soil samples such as R-value tests, corrosion tests and Plasticity Index test, as necessary.
5. Soils Analysis/Evaluation: Perform engineering analyses and develop design recommendations for the proposed pavement design using a new construction approach. Dynaflect test results should provide an overlay program based on performance of the existing pavement section. Consultant will provide Traffic Index to subconsultant.
6. Prepare Draft Geotechnical Report: Prepare preliminary recommendations for pavement design using the construction and overlay approach. Recommendations will include maximizing of the existing section for a new pavement section, use of RACG as an overlay option and a combination of alternates that may be applicable for the specific site conditions.
7. Prepare Final Geotechnical Report: Prepare final report including design recommendations for pavement sections based on comments and discussions with the City and the designer.

Client Initials	Consultant Initials

8. Design Review: We will meet with the designer and the City to review and provide comments during the final design phase of the project.

F. Traffic Index Determination

Based on available traffic data provided by the City and geotechnical investigation data, determine an approximate effective Traffic Index, which will provide a pavement design life of 10 years.

G. Preliminary Design Layout

The Preliminary Design Phase allows the City, utility companies and other involved agencies to review and comment upon the basic design concepts early in the process.

1. Preliminary Plans (Phase I & II)

Develop Preliminary Plans, which is expected to be sufficient detail to establish fundamental elements of the design.

The proposed Preliminary Plans for Phase I and II are as follows:

- a. Title Sheet
- b. Typical Cross Sections
- c. Preliminary Street Improvement Plans
- d. Water Pollution Control Details
- e. Striping Plans

2. General Roadway Facility Review & Improvement

Review existing topography and evaluate surface watersheds. Determine existing drainage pattern deficiencies and revise existing surface slopes or drainage facilities to facilitate improvement and/or removal of these deficiencies within the area being rehabilitated.

Establish proposed slopes and grades within the Street Improvement Plans to remove excessive roadway "domes" or cross slopes along the roadway and at intersections. Establish grid pattern elevations and/or contour line elevations to establish corrective roadway grades and conform locations. Establish proposed median and curb elevations as required.

Review bus routes and work with VTA to establish appropriate Bus Stop Pad upgrades or installment within the limits of the project. Review truck-turning

<i>Client Initials</i>	<i>Consultant Initials</i>

movements and intersections such that off tracking will not conflict with median improvements or signing.

3. Preliminary Construction Cost Estimate

Prepare a Preliminary Estimate of Probable Construction Cost based on items and quantities of work shown on the Preliminary Plans and other anticipated improvements. Prices will be based on the magnitude of the quantities, our experience with similar local projects and engineering judgment.

H. Coordination and Communication

1. Utility Coordination

Transmit preliminary plans to utility companies to confirm existing facilities and identify potential conflicts. Assist in coordinating potholing by the utility companies, if required, and coordinate adjustment of underground facilities where required by the design.

I. PS&E 50% Submittal (Phase I & II)

1. Project Plans

Based on comments received from the Preliminary Design Layout submittal review, advance the design to the point that all major design issues and solutions are represented in the plan documents. Minor details may be missing from the plan set at this milestone, but all plan and detail sheets will be represented with this submittal package.

The plans for the 50% PS&E Submittal for Phase I and II are as follows:

- a. Title Sheet
- b. Key Map & Drawing Index
- c. Construction Survey Control Map
- d. Typical Cross Sections
- e. Street Improvement Plans
- f. Utility Plans
- g. Water Pollution Control Details
- h. Traffic Handling Plans
- i. Signal & Striping Plans

Client Initials	Consultant Initials

2. Outline Specifications

An outline of the specification sections to be included for the ultimate project specifications will be identified with the 50% submittal. The outline will be in the form of a list of City or Caltrans specifications sections that is intended to be used for the project.

3. Engineers Estimate

The Preliminary Construction Cost Estimate will be updated to reflect the refinements from the Preliminary Design submittal to the 50% submittal.

J. Right-of-Way Investigation

1. Based on County APMs, record drawings and maps, survey data, and topographic mapping, use the centerline of the street to estimate existing right-of-way and property line locations. Right-of-way will be approximate and for general reference only. Any verification of actual location of right-of-way shall be performed as additional services.

K. PS&E 90% Submittal (Phase I & II)

Prepare and submit PS&E to the City, utility companies and other agencies for final review and comments. Work with the City and other agencies to resolve any conflicts between the comments of different reviewers.

1. Project Plans

Prepare 90% Plans to provide an opportunity for the agencies to thoroughly review the details of the project. The following plan types will be prepared:

- a. Title Sheet, Legend and Notes
- b. Key Map and Drawing Index
- c. Construction Survey Control Map
- d. Typical Cross Sections
- e. Street Improvement Plans
- f. Construction Details
- g. Utility Plans and Profiles
- h. Water Pollution Control Details
- i. Traffic Handling and Construction Area Signs
- j. Signal & Striping Plans (with Signing)

Client Initials	Consultant Initials

k. Cross Sections

2. Specifications

Prepare specifications in draft form using City and Caltrans Standard Specifications.

3. Engineer's Estimate

Update the preliminary Estimate of Probably Construction Cost for use in the Bid Documents using standard City and/or Caltrans items.

4. Quality Assurance Review

Conduct an internal quality assurance review of the plans and specifications, concurrent with review of the 90% Submittal by the City and other agencies. HMM's quality assurance program provides for independent checking of individual tasks as well as an independent review by experienced senior staff. The purpose of this review is to provide oversight to specific project details by professionals who are not closely involved in the design, and to review the constructability, cost-effectiveness and completeness of design features relative to the normal standard of professional care.

L. Final PS&E Submittal (Phase I & II)

1. Prepare Final Bid Documents

After agency review of the PS&E 90% Submittal, we will prepare the Final Bid Documents in accordance with the City's instructions.

2. Final Review & Revisions (for agency approvals)

Provide the City and other agencies the opportunity to review the completed Bid Documents and direct minor revisions. Submit final documents for signature.

M. Post Design Services (Phase I & II) – 24 hours total

1. Bidding Support

Make available project staff to answer questions during the bidding process.

Client Initials	Consultant Initials

2. Assist Agency in preparation of addenda to the bid documents. Addenda to include changes beyond the control of HMM will be considered as extra services.

N. Services During Construction (Phase I & II) – 24 hours total

1. Attend the pre-construction conference with the City and Contractor.
2. Review shop drawings and submittals which are required by the project specifications for general conformance with the Consultant's design concept and general compliance with the contract documents, if required.
3. Evaluate requests from Contractor for permission to use alternative construction methods or materials and make recommendations to the City as to their suitability.
4. Review Contractor's requests for information (RFIs) and provide responses from the designers or other involved parties.
5. Prepare Contract Change Orders for approval by the City when required by unanticipated field conditions or to clarify the intent of the plans and specifications.
6. Make occasional field reviews to assist City in observing the performance of the work and placement of materials to determine if the work is in general conformance to the requirements of the plans and specifications.
7. Prepare record drawings based on information provided by others.

O. Reimbursable Expenses

Client shall reimburse Consultant for the cost of printing, plotting, reproduction, and delivery expenses, and all subconsultant services, incurred in performing the work required under this Agreement and incurred at Client's request, at actual cost plus ten percent (10%), not-to-exceed \$1,000.

II. DUTIES OF CLIENT

- A. The following activities are the responsibility of the Client. This is not intended to represent a complete list but is included for additional clarity.
 1. Provide exhibits by other consultants including, without limitation, architectural and landscaping plans.

Client Initials	Consultant Initials

2. Provide current preliminary title reports.
3. Provide copies of all available plans, exhibits, records data and information pertinent to the project.
4. Provide Consultant with permission to enter the grounds as necessary to perform the services.
5. Pay the cost of all fees, permits, and other charges not specifically included in this Agreement.
6. Obtain approval of all governmental authorities having jurisdiction over the project and from such bodies as may be necessary for the prosecution and completion of the project.
7. Obtain off-site easements and right-of-way as required to complete the project.
8. Provide boilerplate specifications.
9. Provide title blocks, in AutoCAD format.
10. Provide construction supervision, inspection, administration and coordination. Except those shown in Item N.

III. SPECIAL PROVISIONS

- A. Services for the following items are specifically not included in the scope of services. This is not intended to represent a complete list, but is added on for clarity.
 1. Structural, mechanical, electrical, fire protection, including plans or calculations for retaining walls, masonry walls, structural excavations and sheeting or shoring.
 2. Architectural or landscape architectural site facilities including recreational facilities, courtyards, plazas, special enhanced pavements, stairs, walks, masonry walls, fences, retaining walls, finish grading of landscaped areas, irrigation, private lighting systems, parking lot striping or signing.
 3. Subsurface water drainage, dewatering facilities and pumping stations and force mains for storm drainage and sanitary sewer.
 4. Any services related to soil contamination or soil contamination mitigation.

<i>Client Initials</i>	<i>Consultant Initials</i>
------------------------	----------------------------

5. Uncovering or potholing existing underground facilities.
6. Construction administration services of any kind. Except those shown in Item N.

B. This Agreement is based on the assumption that the project will be designed and constructed as a single project without phasing, other than phasing described within this contract.

IV. INFORMATION PROVIDED BY OTHERS

Consultant shall indicate to the Client the information needed for rendering of services hereunder. Client shall provide to the Consultant such information as is available to the Client and the Client's consultants and contractors, and the Consultant shall be entitled to rely upon the accuracy and completeness thereof. The Client recognizes that it is impossible for the Consultant to assure the accuracy, completeness and sufficiency of such information, either because it is impossible to verify, or because of errors or omissions, which may have occurred in assembling the information the Client is providing.

V. BURIED UTILITIES

Client authorizes Consultant and/or his subconsultants to conduct research of existing utility facilities necessary to prepare plans indicating the locations intended for underground improvements. Such services by the Consultant or his subconsultant will be performed in a manner consistent with the ordinary standard of care. The Client recognizes that the research may not identify all existing underground improvements and that the information upon which the Consultant relies may contain errors or may not be complete.

VI. CHANGES IN SERVICES

Client may request changes in scope of or character of service, either decreasing or increasing the amount of Consultant's services.

In the event that additional services not included in the Scope of Services are required, or if the Client requests changes and revisions after Consultant has performed the services in the Scope of Services, Client agrees to pay for all such additional services and expenses incurred, on a charge rate basis in accordance with Consultant's Charge Rate Schedule.

VII. SUSPENSION OF SERVICES AND DELAYS

Client may direct Consultant to suspend or delay services during design. If the project is suspended for more than thirty (30) calendar days in the aggregate, the Consultant shall be

Client Initials	Consultant Initials
-----------------	---------------------

compensated for services performed and charges incurred prior to notice to suspend and, upon resumption, an equitable adjustment to schedule shall be made based on the delay caused by the suspension. If the project is suspended for more than one hundred eighty (180) calendar days in the aggregate, the Consultant may terminate this Agreement upon giving notice in writing to the Client.

The Consultant is not responsible for delays caused by factors beyond the Consultant's reasonable control, including but not limited to failure of the Client to furnish timely information or approve or disapprove of the Consultants services or work product promptly, or caused by faulty performance by the Client or by other Client Consultants. When such delays beyond the Consultant's reasonable control occur, the Client agrees the Consultant is not responsible for damages, nor shall the Consultant be deemed to be in default of this Agreement and a equitable adjustment to the schedule shall be made based on the cause of the delay.

In the event that a project delay or suspension becomes protracted, for more than ninety (90) calendar days in the aggregate, Additional Services may be requested by the Client to provide necessary project support beyond Agreement duration outlined within the schedule, as provided in Exhibit A-A hereto.

VIII. SCHEDULE AND TERMS OF PERFORMANCE

Consultant acknowledges the importance to the Client of the Client's project schedule and agrees to put forth reasonable efforts in performing the services with due diligence under this Agreement in a manner consistent with that schedule, as provided in Exhibit A-A hereto. The Client understands, however, that the Consultant must be governed by sound professional practice. Should the Consultant discern that the schedule will not be met for any reason, he shall so notify the Client as soon as practically possible as to adequate time necessary to perform a competent, professional job.

In consideration of the benefits to the Client of employing a fast track process (in which some of the Consultants design services overlap and are out of sequence with the traditional project delivery method), and in recognition of the inherent risks of fast tracking to the Consultant, the Client agrees to compensate the Consultant for design changes and modifications of the work already completed, due to the Client's decision to employ the fast track process. The Client further agrees to compensate the Consultant for all Additional Services required to modify, correct or adjust the Construction Documents and coordinate them in order to meet the Client's requirements because of the Clients decision to construct the project in the fast track manner.

Client Initials	Consultant Initials

IX. COMPENSATION

A. Basic Services Fee

For providing the services included in the Scope of Services, Client shall compensate Consultant on a charge rate basis in accordance with the Charge Rate Schedule in effect at the time the services are performed. The Charge Rate Schedule is updated annually in July.

Estimated fees are as follows:

<u>Description</u>	<u>Estimated Fees</u>
Item A – Project Management	\$ 12,610
Item B – Funding Assistance Services	\$ 2,500
Item C – Preliminary Investigation	\$ 2,000
Item D – Aerial Base Map	\$ 26,220
Item E – Geotechnical Investigation	\$ 24,200
Item F – Traffic Index Determination	\$ 2,440
Item G – Preliminary Design Layout (Phase I & II)	\$ 9,400
Item H – Coordination and Communication	\$ 1,700
Item I – PS&E 50% Submittal (Phase I & II)	\$ 22,800
Item J – Right-of-Way Investigation	\$ 500
Item K – PS&E 90% Submittal (Phase I & II)	\$ 23,550
Item L – Final PS&E Submittal (Phase I & II)	\$ 11,100
Item M – Post Design Services (Phase I & II)	\$ 3,220
Item N – Services During Construction (Phase I & II)	\$ 3,220
Item O – Reimbursable Expenses	\$ 1,000
Total Estimated Fee	\$ 146,460

On July 1, 2005 and July 1 of each subsequent calendar year, the Charge Rate Schedule will be subject to an automatic increase to cover wage adjustments for field and office personnel and other costs.

Billings will be made every four weeks for the services performed within the preceding four-week period *payable within 30 days*.

Estimated fees are allowances for services to be performed and unexpended allowances within certain tasks may be reallocated to other tasks, not to exceed total estimated fees for the contract.

<i>Client Initials</i>	<i>Consultant Initials</i>

B. Extra Work – To be approved in advance

Extra work will be billed on a charge rate basis in accordance with the fee schedule in effect at the time the work is accomplished. The schedule is updated annually on July 1 to reflect employee wage increase and other costs. The current schedule is attached.

If this agreement is acceptable to you, please execute both copies of the Agreement form, initial each page, and return one original for our file to serve as our notice to proceed with the services. (Note: City may execute agreement after City Council approval.)

Should you have any questions or comments, please call Mike Morsilli or me at 408-487-2200.

Very truly yours,

HMH ENGINEERS

John D. Kenyon, P.E.
Senior Engineer

EXHIBIT B

**COMPENSATION SCHEDULE
PERSONEL AND RATES**

COMPENSATION

Basic Services Fee

For providing the services included in the Scope of Services, Client shall compensate Consultant on a charge rate basis in accordance with the Charge Rate Schedule in effect at the time the services are performed. The Charge Rate Schedule is updated annually in July.

Estimated fees are as follows:

Description	Estimated Fees
Item A – Project Management	\$ 12,610
Item B – Funding Assistance Services	\$ 2,500
Item C – Preliminary Investigation	\$ 2,000
Item D – Aerial Base Map	\$ 26,220
Item E – Geotechnical Investigation	\$ 24,200
Item F – Traffic Index Determination	\$ 2,440
Item G – Preliminary Design Layout (Phase I & II)	\$ 9,400
Item H – Coordination and Communication	\$ 1,700
Item I – PS&E 50% Submittal (Phase I & II)	\$ 22,800
Item J – Right-of-Way Investigation	\$ 500
Item K – PS&E 90% Submittal (Phase I & II)	\$ 23,550
Item L – Final PS&E Submittal (Phase I & II)	\$ 11,100
Item M – Post Design Services (Phase I & II)	\$ 3,220
Item N – Services During Construction (Phase I & II)	\$ 3,220
Item O – Reimbursable Expenses	\$ 1,000

Total Estimated Fee **\$ 146,460**

On July 1, 2005 and July 1 of each subsequent calendar year, the Charge Rate Schedule will be subject to an automatic increase to cover wage adjustments for field and office personnel and other costs.

Billings will be made every four weeks for the services performed within the preceding four-week period *payable upon receipt*.

Estimated fees are allowances for services to be performed and unexpended allowances within certain tasks may be reallocated to other tasks, not to exceed total estimated fees for the contract.

CHARGE RATE SCHEDULE

Professional & Office

Engineering or Surveying Manager	\$ 148	per hour
Planning Manager	\$ 175	per hour
Senior Engineer, Surveyor, Planner or Landscape Architect	\$ 130	per hour
Associate Engineer, Surveyor, Planner or Landscape Architect	\$ 120	per hour
Design Engineer	\$ 114	per hour
Assistant Engineer, Surveyor, Planner or Landscape Designer	\$ 106	per hour
Junior Engineer, Surveyor, Planner or Landscape Designer	\$ 92	per hour
Senior Engineering Technician	\$ 110	per hour
Engineering Technician or Landscape Drafter	\$ 92	per hour
Junior Engineering Technician or Junior Landscape Drafter	\$ 76	per hour
Engineering Aide	\$ 52	per hour
Technical Typist	\$ 52	per hour

Field Services

2-Man Field Crew	\$ 200	per hour
2-Man Field Crew with GPS	\$ 216	per hour
3-Man Field Crew with Apprentice	\$ 238	per hour
3-Man Field Crew with Journeyman	\$ 262	per hour
1-Man Field Crew with Robotic or GPS	\$ 136	per hour
Senior Field Engineer	\$ 120	per hour
Field Engineer	\$ 106	per hour

Miscellaneous

Vellum CADD plot	\$ 3	per plot
Mylar CADD plot	\$ 12	per plot
Color photo plot	\$ 52	per plot

Principals are Charged at \$180.00 to \$275.00 per hour

Printing, Reproductions & Materials at Cost, Plus 20%

Transportation at \$0.345 per Mile

Other Outside Services at Cost, Plus 10%

Revised July 11, 2004; Subject to adjustment after December 31, 2004

EXHIBIT C

INSURANCE COVERAGE DOCUMENTS

EXHIBIT D

SAMPLE PROGRESS PAYMENT FORM

EXHIBIT D

CONSULTANT PROGRESS PAYMENT, PROJECT NO. 4225

CONSULTANT: HMM Engineers
CONTRACT DATE: February 15, 2005
CONTACT PERSON: John Kenyon
PHONE NO: 408-487-2200
FAX NO: 408-487-2222

PROJECT NAME: S. Park Victoria Drive Pavement Rehabilitation, Phase I & 2
PROJECT NO: 4225
ACCOUNT NO: CP 4225-1-4237
P.O. NO: (TBD)

[illegible]